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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Written statement submitted by the International League for Human Rights a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[31 January 1991]

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The International League for Human Rights (FIDH) welcomes the fact that Costa Rica has called for consideration of a new draft optional Protocol to the Convention against Torture. FIDH requests the Commission to give it the fullest possible attention and hopes that a sessional working group will be established in order to study it next year already.

2. This draft, which is largely based on that submitted by Costa Rica in 1980, was the subject of a symposium of independent experts held in Geneva from 29 November to 1 December 1990, in which our Secretary-General participated. The symposium worked on adapting the 1980 draft to the current

situation, inter alia in order to take account of the existence of a regional European instrument. The Government of Costa Rica has decided to submit the text which emerged from the symposium to the present session.

3. The proposed protocol establishes a preventive mechanism of a non-judicial type. In that respect it differs from all the mechanisms established hitherto, either by the Covenants or by the various human rights conventions, whose bodies can intervene only in response to a complaint. The mechanism which goes furthest is that established by article 20 of the Convention against Torture, which authorizes the Committee against Torture to conduct an inquiry, possibly with a visit, but only when it receives "reliable information which appears to it to contain well-founded indications that torture is being systematically practised". The draft Protocol, on the other hand, allows visits, at any time, to any place where persons deprived of their liberty may be held. The visiting body examines the treatment of the persons deprived of liberty in that place and may make recommendations to the State concerned with a view to preventing torture and ill-treatment. What is involved, therefore, is a system which is not intended to declare that a State has violated the provisions of a convention, but is based on co-operation with States and seeks to induce them of their own accord to take the necessary measures to avert torture or ill-treatment.

4. Because of this requirement of co-operation between States and the visiting body, reports on visits are confidential. Only in the event of a State's refusal to co-operate may a public statement be made.

5. There is no doubt that such a system would be one of the most effective instruments in preventing torture. And in this area as in so many others, it is prevention that is of essence.

6. However, this new draft gives rise to a few problems. We should like to take them up briefly in this statement:

(a) Should a visiting procedure be universal or regional?

7. As is well known, a system based on the same ideas has been adopted in Europe in the form of the European Convention for the Prevention of Torture. This Convention, which was opened for signature in November 1987, became operational at the beginning of 1990. As at the end of last year, 19 of the 24 States members of the Council of Europe had already ratified it. But the Convention's success, which shows that the mechanism has been well received by States, has in fact been invoked as a reason for not going ahead with the draft optional Protocol to the United Nations Convention. A better course, it has been said, is to pursue the idea of regional conventions: after the European Convention why not an American convention, an African convention and an Asian convention for the prevention of torture?

8. FIDH would naturally welcome the establishment of such mechanisms in all regions of the world, but let us be realistic: there is very little chance of this coming about. If the European Convention has seen the light of day, it has been in the context of the Council of Europe which, for many years, has had institutions for the implementation of human rights and developed a practice to that end. Such institutions undoubtedly also exist in the

Americas and Africa, but it will be some time before a consensus is reached on such a mechanism in all regions. So do we have the right to wait when what is involved is torture, which is afflicting men, women and even children, in the most unspeakable fashion, at this very moment in so many countries?

9. And then, what chance would there be of regional systems emerging if the United Nations refused to go ahead with a universal system? And care must be taken not to allow the development of practices that vary from one region to another, since as has been repeatedly stated by the United Nations, the elimination of torture is a universal objective.

10. Admittedly, the European countries may feel less concerned since they already have a mechanism which seems to be operating effectively. But the point is not that each State should know whether it needs that mechanism; what is involved is a joint effort which entails the collaboration of all and how often have the European countries affirmed this desire for collaboration? When a practical step is being proposed is not the time to take refuge behind the regionalist argument.

(b) Which body should be made responsible for undertaking visits?

11. At various levels in the United Nations system, a strong desire has been expressed not to establish new bodies responsible for the implementation of human rights. The independent experts meeting in Geneva in November were well aware of this, even though they emphasized the extremely specific character of the work of visiting places of detention. They proposed that the mechanism should be placed under the responsibility of the Committee established by the Convention against Torture, even though, for reasons of overwork and effectiveness, the task of undertaking visits should be entrusted to experts appointed by that Committee. It will be for the working group to consider how the new mechanism may be placed under the responsibility of an already existing body, but at the same time be adapted to very different tasks, of a preventive nature.

(c) Is it the right time to discuss the draft in the Commission on Human Rights?

12. When the first draft optional Protocol was submitted by Costa Rica in 1980, it had been agreed that it would not be considered until the Convention against Torture was adopted. The Convention was adopted in 1984, but further action was again postponed because a European Convention was under consideration. When the latter Convention was adopted in 1987, the United Nations Convention against Torture had just entered into force. It was necessary to wait a few years in order to see how it would function. Now, we are being told, the European Committee for the Prevention of Torture has been in existence for only one year. Should we not wait a little longer until it has issued two or three annual reports? Another argument advanced concerns the financial problems.

13. There have always been excellent reasons for waiting. But there are even better reasons for not waiting. The main one is that the torturers, for their part, do not wait. The second is that as we know from experience, consideration of the draft will take several years. Next year, the chances are that the increase in the membership of the Commission on Human Rights will

result in a further slowing down of its activities. There is no doubt that, before consideration of the draft optional Protocol has been completed, there will be several annual reports of the European Committee for the Prevention of Torture and that the experience of the United Nations Committee against Torture will have increased considerably.

14. As to the financial argument, it will always exist. It is the most reliable weapon in the hands of those who want to prevent progress in the implementation of human rights. But there is no reason to be ashamed at calling for additional financial resources for human rights, which constitute one of the priority objectives of the United Nations, but to which scarcely 1 per cent of the Organization's global budget is allocated.

15. We are certainly not asking the Commission to adopt a new instrument with its eyes closed. The instrument must be examined very closely in order to ensure that it is truly effective. For this reason, FIDH calls for the convening at the forty-eighth session, i.e. next year, of a sessional working group to consider the draft submitted by Costa Rica.